

## HB0063S02 compared with HB0063S01

~~text~~ shows text that was in HB0063S01 but was deleted in HB0063S02.

Inserted text shows text that was not in HB0063S01 but was inserted into HB0063S02.

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Representative **Rex P. Shipp** proposes the following substitute bill:

### **WORKERS' COMPENSATION COVERAGE AMENDMENTS**

2020 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Rex P. Shipp**

Senate Sponsor: \_\_\_\_\_

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#### **LONG TITLE**

##### **General Description:**

This bill amends provisions related to workers' compensation coverage.

##### **Highlighted Provisions:**

This bill:

- ▶ provides that, under certain circumstances, a partnership, sole proprietorship, or a certain limited liability company may elect not to provide workers' compensation coverage for as many as three minor employees under certain circumstances;
- ▶ amends provisions regarding employers in relation to a minor for whom a partnership, sole proprietorship, or limited liability company obtains a waiver; and
- ▶ makes technical and conforming changes.

##### **Money Appropriated in this Bill:**

None

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### Other Special Clauses:

None

### Utah Code Sections Affected:

#### AMENDS:

**34A-2-102**, as last amended by Laws of Utah 2019, Chapter 121

**34A-2-103**, as last amended by Laws of Utah 2017, Chapter 363

**34A-2-104**, as last amended by Laws of Utah 2019, Chapter 299

**34A-2-704**, as last amended by Laws of Utah 2019, Chapters 136 and 194

**34A-2-1003**, as last amended by Laws of Utah 2017, Chapter 146

**34A-2-1004**, as last amended by Laws of Utah 2017, Chapter 146

**34A-2-1005**, as enacted by Laws of Utah 2011, Chapter 328

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*Be it enacted by the Legislature of the state of Utah:*

Section 1. Section **34A-2-102** is amended to read:

**34A-2-102. Definition of terms.**

(1) As used in this chapter:

(a) "Average weekly wages" means the average weekly wages as determined under

Section 34A-2-409.

(b) "Award" means a final order of the commission as to the amount of compensation

due:

(i) an injured employee; or

(ii) a dependent of a deceased employee.

(c) "Compensation" means the payments and benefits provided for in this chapter or

Chapter 3, Utah Occupational Disease Act.

(d) (i) "Decision" means a ruling of:

(A) an administrative law judge; or

(B) in accordance with Section 34A-2-801:

(I) the commissioner; or

(II) the Appeals Board.

(ii) "Decision" includes:

(A) an award or denial of a medical, disability, death, or other related benefit under this

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chapter or Chapter 3, Utah Occupational Disease Act; or

(B) another adjudicative ruling in accordance with this chapter or Chapter 3, Utah Occupational Disease Act.

(e) "Director" means the director of the division, unless the context requires otherwise.

(f) "Disability" means an administrative determination that may result in an entitlement to compensation as a consequence of becoming medically impaired as to function. Disability can be total or partial, temporary or permanent, industrial or nonindustrial.

(g) "Division" means the Division of Industrial Accidents.

(h) "First responder" means:

(i) a law enforcement officer, as defined in Section 53-13-103;

(ii) an emergency medical technician, as defined in Section 26-8c-102;

(iii) an advanced emergency medical technician, as defined in Section 26-8c-102;

(iv) a paramedic, as defined in Section 26-8c-102;

(v) a firefighter, as defined in Section 34A-3-113;

(vi) a dispatcher, as defined in Section 53-6-102; or

(vii) a correctional officer, as defined in Section 53-13-104.

(i) "Minor" means an individual who is less than 18 years of age.

~~(j)~~ (j) "Impairment" is a purely medical condition reflecting an anatomical or functional abnormality or loss. Impairment may be either temporary or permanent, industrial or nonindustrial.

~~(k)~~ (k) "Order" means an action of the commission that determines the legal rights, duties, privileges, immunities, or other interests of one or more specific persons, but not a class of persons.

~~(l)~~ (l) (i) "Personal injury by accident arising out of and in the course of employment" includes an injury caused by the willful act of a third person directed against an employee because of the employee's employment.

(ii) "Personal injury by accident arising out of and in the course of employment" does not include a disease, except as the disease results from the injury.

~~(m)~~ (m) "Safe" and "safety," as applied to employment or a place of employment, means the freedom from danger to the life or health of employees reasonably permitted by the nature of the employment.

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(2) As used in this chapter and Chapter 3, Utah Occupational Disease Act:

(a) "Brother or sister" includes a half brother or sister.

(b) "Child" includes:

(i) a posthumous child; or

(ii) a child legally adopted prior to an injury.

Section 2. Section 34A-2-103 is amended to read:

### **34A-2-103. Employers enumerated and defined -- Regularly employed -- Statutory employers -- Exceptions.**

(1) (a) The state, and each county, city, town, and school district in the state are considered employers under this chapter and Chapter 3, Utah Occupational Disease Act.

(b) For the purposes of the exclusive remedy in this chapter and Chapter 3, Utah Occupational Disease Act, prescribed in Sections 34A-2-105 and 34A-3-102, the state is considered to be a single employer and includes any office, department, agency, authority, commission, board, institution, hospital, college, university, or other instrumentality of the state.

(2) (a) Subject to the other provisions of this section, each person, including each public utility and each independent contractor, who regularly employs one or more workers or operatives in the same business, or in or about the same establishment, under any contract of hire, express or implied, oral or written, is considered an employer under this chapter and Chapter 3, Utah Occupational Disease Act.

(b) As used in this Subsection (2):

(i) "Independent contractor" means any person engaged in the performance of any work for another who, while so engaged, is:

(A) independent of the employer in all that pertains to the execution of the work;

(B) not subject to the routine rule or control of the employer;

(C) engaged only in the performance of a definite job or piece of work; and

(D) subordinate to the employer only in effecting a result in accordance with the employer's design.

(ii) "Regularly" includes all employments in the usual course of the trade, business, profession, or occupation of the employer, whether continuous throughout the year or for only a portion of the year.

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(3) (a) The client under a professional employer organization agreement regulated under Title 31A, Chapter 40, Professional Employer Organization Licensing Act:

(i) is considered the employer of a covered employee; and

(ii) subject to Section 31A-40-209, shall secure workers' compensation benefits for a covered employee by complying with Subsection 34A-2-201(1) and commission rules.

(b) The division shall promptly inform the Insurance Department if the division has reason to believe that a professional employer organization is not in compliance with Subsection 34A-2-201(1) and commission rules.

(4) A domestic employer who does not employ one employee or more than one employee at least 40 hours per week is not considered an employer under this chapter and Chapter 3, Utah Occupational Disease Act.

(5) (a) As used in this Subsection (5):

(i) (A) "Agricultural employer" means a person who employs agricultural labor as defined in Subsections 35A-4-206(1) and (2) and does not include employment as provided in Subsection 35A-4-206(3).

(B) Notwithstanding Subsection (5)(a)(i)(A), only for purposes of determining who is a member of the employer's immediate family under Subsection (5)(a)(ii), if the agricultural employer is a corporation, partnership, or other business entity, "agricultural employer" means an officer, director, or partner of the business entity.

(ii) "Employer's immediate family" means:

(A) an agricultural employer's:

(I) spouse;

(II) grandparent;

(III) parent;

(IV) sibling;

(V) child;

(VI) grandchild;

(VII) nephew; or

(VIII) niece;

(B) a spouse of any person provided in Subsections (5)(a)(ii)(A)(II) through (VIII); or

(C) an individual who is similar to those listed in Subsection (5)(a)(ii)(A) or (B) as

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defined by rules of the commission.

(iii) "Nonimmediate family" means a person who is not a member of the employer's immediate family.

(b) For purposes of this chapter and Chapter 3, Utah Occupational Disease Act, an agricultural employer is not considered an employer of a member of the employer's immediate family.

(c) For purposes of this chapter and Chapter 3, Utah Occupational Disease Act, an agricultural employer is not considered an employer of a nonimmediate family employee if:

(i) for the previous calendar year the agricultural employer's total annual payroll for all nonimmediate family employees was less than \$8,000; or

(ii) (A) for the previous calendar year the agricultural employer's total annual payroll for all nonimmediate family employees was equal to or greater than \$8,000 but less than \$50,000; and

(B) the agricultural employer maintains insurance that covers job-related injuries of the employer's nonimmediate family employees in at least the following amounts:

(I) \$300,000 liability insurance, as defined in Section 31A-1-301; and

(II) \$5,000 for health care benefits similar to benefits under health care insurance as defined in Section 31A-1-301.

(d) For purposes of this chapter and Chapter 3, Utah Occupational Disease Act, an agricultural employer is considered an employer of a nonimmediate family employee if:

(i) for the previous calendar year the agricultural employer's total annual payroll for all nonimmediate family employees is equal to or greater than \$50,000; or

(ii) (A) for the previous year the agricultural employer's total payroll for nonimmediate family employees was equal to or exceeds \$8,000 but is less than \$50,000; and

(B) the agricultural employer fails to maintain the insurance required under Subsection (5)(c)(ii)(B).

(6) An employer of agricultural laborers or domestic servants who is not considered an employer under this chapter and Chapter 3, Utah Occupational Disease Act, may come under this chapter and Chapter 3, Utah Occupational Disease Act, by complying with:

(a) this chapter and Chapter 3, Utah Occupational Disease Act; and

(b) the rules of the commission.

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(7) (a) (i) As used in this Subsection (7)(a), "employer" includes any of the following persons that procures work to be done by a contractor notwithstanding whether or not the person directly employs a person:

- (A) a sole proprietorship;
- (B) a corporation;
- (C) a partnership;
- (D) a limited liability company; or
- (E) a person similar to one described in Subsections (7)(a)(i)(A) through (D).

(ii) If an employer procures any work to be done wholly or in part for the employer by a contractor over whose work the employer retains supervision or control, and this work is a part or process in the trade or business of the employer, the contractor, all persons employed by the contractor, all subcontractors under the contractor, and all persons employed by any of these subcontractors, are considered employees of the original employer for the purposes of this chapter and Chapter 3, Utah Occupational Disease Act.

(b) Any person who is engaged in constructing, improving, repairing, or remodeling a residence that the person owns or is in the process of acquiring as the person's personal residence may not be considered an employee or employer solely by operation of Subsection (7)(a).

(c) A partner in a partnership or an owner of a sole proprietorship is not considered an employee under Subsection (7)(a) if the employer who procures work to be done by the partnership or sole proprietorship obtains and relies on either:

(i) a valid certification of the partnership's or sole proprietorship's compliance with Section 34A-2-201 indicating that the partnership or sole proprietorship secured the payment of workers' compensation benefits pursuant to Section 34A-2-201; or

(ii) if a partnership or sole proprietorship with no employees other than a partner of the partnership or owner of the sole proprietorship, a workers' compensation coverage waiver issued pursuant to Part 10, Workers' Compensation Coverage Waivers Act, stating that:

(A) the partnership or sole proprietorship is customarily engaged in an independently established trade, occupation, profession, or business; and

(B) the partner or owner personally waives the partner's or owner's entitlement to the benefits of this chapter and Chapter 3, Utah Occupational Disease Act, in the operation of the

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partnership or sole proprietorship.

(d) A director or officer of a corporation is not considered an employee under Subsection (7)(a) if the director or officer is excluded from coverage under Subsection 34A-2-104(4).

(e) A contractor or subcontractor is not an employee of the employer under Subsection (7)(a), if the employer who procures work to be done by the contractor or subcontractor obtains and relies on either:

(i) a valid certification of the contractor's or subcontractor's compliance with Section 34A-2-201; or

(ii) if a partnership, corporation, or sole proprietorship with no employees other than a partner of the partnership, officer of the corporation, or owner of the sole proprietorship, a workers' compensation coverage waiver issued pursuant to Part 10, Workers' Compensation Coverage Waivers Act, stating that:

(A) the partnership, corporation, or sole proprietorship is customarily engaged in an independently established trade, occupation, profession, or business; and

(B) the partner, corporate officer, or owner personally waives the partner's, corporate officer's, or owner's entitlement to the benefits of this chapter and Chapter 3, Utah Occupational Disease Act, in the operation of the partnership's, corporation's, or sole proprietorship's enterprise under a contract of hire for services.

(f) (i) For purposes of this Subsection (7)(f), "eligible employer" means a person who:

(A) is an employer; and

(B) procures work to be done wholly or in part for the employer by a contractor,

including:

(I) all persons employed by the contractor;

(II) all subcontractors under the contractor; and

(III) all persons employed by any of these subcontractors.

(ii) Notwithstanding the other provisions in this Subsection (7), if the conditions of Subsection (7)(f)(iii) are met, an eligible employer is considered an employer for purposes of Section 34A-2-105 of the contractor, subcontractor, and all persons employed by the contractor or subcontractor described in Subsection (7)(f)(i)(B).

(iii) Subsection (7)(f)(ii) applies if the eligible employer:

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(A) under Subsection (7)(a) is liable for and pays workers' compensation benefits as an original employer under Subsection (7)(a) because the contractor or subcontractor fails to comply with Section 34A-2-201;

(B) (I) secures the payment of workers' compensation benefits for the contractor or subcontractor pursuant to Section 34A-2-201;

(II) procures work to be done that is part or process of the trade or business of the eligible employer; and

(III) does the following with regard to a written workplace accident and injury reduction program that meets the requirements of Subsection 34A-2-111(3)(d):

(Aa) adopts the workplace accident and injury reduction program;

(Bb) posts the workplace accident and injury reduction program at the work site at which the eligible employer procures work; and

(Cc) enforces the workplace accident and injury reduction program according to the terms of the workplace accident and injury reduction program; or

(C) (I) obtains and relies on:

(Aa) a valid certification described in Subsection (7)(c)(i) or (7)(e)(i);

(Bb) a workers' compensation coverage waiver described in Subsection (7)(c)(ii) or (7)(e)(ii); or

(Cc) proof that a director or officer is excluded from coverage under Subsection 34A-2-104(4);

(II) is liable under Subsection (7)(a) for the payment of workers' compensation benefits if the contractor or subcontractor fails to comply with Section 34A-2-201;

(III) procures work to be done that is part or process in the trade or business of the eligible employer; and

(IV) does the following with regard to a written workplace accident and injury reduction program that meets the requirements of Subsection 34A-2-111(3)(d):

(Aa) adopts the workplace accident and injury reduction program;

(Bb) posts the workplace accident and injury reduction program at the work site at which the eligible employer procures work; and

(Cc) enforces the workplace accident and injury reduction program according to the terms of the workplace accident and injury reduction program.

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(g) A minor employee of a partnership, a sole proprietorship, or a limited liability company, if the limited liability company is taxed as a partnership or sole proprietorship, is not considered an employee under Subsection (7)(a), if the employer who procures work to be done by the partnership, sole proprietorship, or limited liability company obtains and relies on either:

(i) a valid certification of the partnership, sole proprietorship, or limited liability company's compliance with Section 34A-2-201, indicating that the partnership, sole proprietorship, or limited liability company secured the payment of workers' compensation benefits in accordance with Section 34A-2-201; or

(ii) a workers' compensation coverage waiver issued under Subsection 34A-2-1003(2).

(8) (a) For purposes of this Subsection (8), "unincorporated entity" means an entity organized or doing business in the state that is not:

- (i) an individual;
- (ii) a corporation; or
- (iii) publicly traded.

(b) For purposes of this chapter and Chapter 3, Utah Occupational Disease Act, an unincorporated entity that is required to be licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act, is presumed to be the employer of each individual who holds, directly or indirectly, an ownership interest in the unincorporated entity. Notwithstanding Subsection (7)(c) and Subsection 34A-2-104(3), the unincorporated entity shall provide the individual who holds the ownership interest workers' compensation coverage under this chapter and Chapter 3, Utah Occupational Disease Act, unless the presumption is rebutted under Subsection (8)(c).

(c) Pursuant to rules made by the commission in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, an unincorporated entity may rebut the presumption under Subsection (8)(b) for an individual by establishing by clear and convincing evidence that the individual:

- (i) is an active manager of the unincorporated entity;
- (ii) directly or indirectly holds at least an 8% ownership interest in the unincorporated entity; or
- (iii) is not subject to supervision or control in the performance of work by:
  - (A) the unincorporated entity; or

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(B) a person with whom the unincorporated entity contracts.

(d) As part of the rules made under Subsection (8)(c), the commission may define:

(i) "active manager";

(ii) "directly or indirectly holds at least an 8% ownership interest"; and

(iii) "subject to supervision or control in the performance of work."

(9) (a) As used in this Subsection (9), "home and community based services" means one or more of the following services provided to an individual with a disability or to the individual's family that helps prevent the individual with a disability from being placed in a more restrictive setting:

(i) respite care;

(ii) skilled nursing;

(iii) nursing assistant services;

(iv) home health aide services;

(v) personal care and attendant services;

(vi) other in-home care, such as support for the daily activities of the individual with a disability;

(vii) specialized in-home training for the individual with a disability or a family member of the individual with a disability;

(viii) specialized in-home support, coordination, and other supported living services; and

(ix) other home and community based services unique to the individual with a disability or the family of the individual with a disability that help prevent the individual with a disability from being placed in a more restrictive setting.

(b) Notwithstanding Subsection (4) and subject to Subsection (9)(c), an individual with a disability or designated representative of the individual with a disability is considered an employer under this chapter and Chapter 3, Utah Occupational Disease Act, of an individual who provides home and community based services if the individual with a disability or designated representative of the individual with a disability:

(i) employs the individual to provide home and community based services for seven hours per week or more; and

(ii) pays the individual providing the home and community based services from state or

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federal money received by the individual with a disability or designated representative of the individual with a disability to fund home and community based services, including through a person designated by the Secretary of the Treasury in accordance with Section 3504, Internal Revenue Code, as a fiduciary, agent, or other person who has the control, receipt, custody, or disposal of, or pays the wages of, the individual providing the home and community based services.

(c) The state and federal money received by an individual with a disability or designated representative of an individual with a disability shall include the cost of the workers' compensation coverage required by this Subsection (9) in addition to the money necessary to fund the home and community based services that the individual with a disability or family of the individual with a disability is eligible to receive so that the home and community based services are not reduced in order to pay for the workers' compensation coverage required by this Subsection (9).

(10) (a) For purposes of this Subsection (10), "federal executive agency" means an executive agency, as defined in 5 U.S.C. Sec. 105, of the federal government.

(b) For purposes of determining whether two or more persons are considered joint employers under this chapter or Chapter 3, Utah Occupational Disease Act, an administrative ruling of a federal executive agency may not be considered a generally applicable law unless that administrative ruling is determined to be generally applicable by a court of law, or adopted by statute or rule.

(11) (a) As used in this Subsection (11):

(i) "Franchise" means the same as that term is defined in 16 C.F.R. Sec. 436.1.

(ii) "Franchisee" means the same as that term is defined in 16 C.F.R. Sec. 436.1.

(iii) "Franchisor" means the same as that term is defined in 16 C.F.R. Sec. 436.1.

(b) For purposes of this chapter, a franchisor is not considered to be an employer of:

(i) a franchisee; or

(ii) a franchisee's employee.

(c) With respect to a specific claim for relief under this chapter made by a franchisee or a franchisee's employee, this Subsection (11) does not apply to a franchisor under a franchise that exercises a type or degree of control over the franchisee or the franchisee's employee not customarily exercised by a franchisor for the purpose of protecting the franchisor's trademarks

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and brand.

Section ~~2~~3. Section 34A-2-104 is amended to read:

### **34A-2-104. "Employee," "worker," and "operative" defined -- Specific circumstances -- Exemptions.**

(1) As used in this chapter and Chapter 3, Utah Occupational Disease Act, "employee," "worker," and "operative" mean:

(a) (i) an elective or appointive officer and any other person:

(A) in the service of:

(I) the state;

(II) a county, city, or town within the state; or

(III) a school district within the state;

(B) serving the state, or any county, city, town, or school district under:

(I) an election;

(II) appointment; or

(III) any contract of hire, express or implied, written or oral; and

(ii) including:

(A) an officer or employee of the state institutions of learning; and

(B) a member of the Utah National Guard or Utah State Defense Force while on state active duty; and

(b) a person in the service of any employer, as defined in Section 34A-2-103, who employs one or more workers or operatives regularly in the same business, or in or about the same establishment:

(i) under any contract of hire:

(A) express or implied; and

(B) oral or written;

(ii) including aliens and minors, whether legally or illegally working for hire; and

(iii) not including any person whose employment:

(A) is casual; and

(B) not in the usual course of the trade, business, or occupation of the employee's employer.

(2) (a) Unless a lessee provides coverage as an employer under this chapter and

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Chapter 3, Utah Occupational Disease Act, any lessee in mines or of mining property and each employee and sublessee of the lessee shall be:

- (i) covered for compensation by the lessor under this chapter and Chapter 3, Utah Occupational Disease Act;
- (ii) subject to this chapter and Chapter 3, Utah Occupational Disease Act; and
- (iii) entitled to the benefits of this chapter and Chapter 3, Utah Occupational Disease Act, to the same extent as if the lessee, employee, or sublessee were employees of the lessor drawing the wages paid employees for substantially similar work.

(b) The lessor may deduct from the proceeds of ores mined by the lessees an amount equal to the insurance premium for that type of work.

(3) (a) (i) Except as provided in Subsection (3)(b), a partnership or sole proprietorship may elect to include any partner of the partnership or owner of the sole proprietorship as an employee of the partnership or sole proprietorship under this chapter and Chapter 3, Utah Occupational Disease Act.

(ii) If a partnership or sole proprietorship makes an election under Subsection (3)(a), the partnership or sole proprietorship shall serve written notice upon its insurance carrier naming the persons to be covered.

(iii) A partner of a partnership or owner of a sole proprietorship may not be considered an employee of the partner's partnership or the owner's sole proprietorship under this chapter or Chapter 3, Utah Occupational Disease Act, until the notice described in Subsection (3)(a)(ii) is given.

(iv) For premium rate making, the insurance carrier shall assume the salary or wage of the partner or sole proprietor electing coverage under Subsection (3)(a)(i) to be 100% of the state's average weekly wage.

(b) A partner of a partnership or an owner of a sole proprietorship is an employee of the partnership or sole proprietorship under this chapter and Chapter 3, Utah Occupational Disease Act, if:

- (i) the partnership or sole proprietorship:
  - (A) is a motor carrier; and
  - (B) employs at least one individual who is not a partner or an owner; and
- (ii) the partner or owner personally operates a motor vehicle for the motor carrier.

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(4) (a) Except as provided in Subsection (4)(g), a corporation may elect not to include any director or officer of the corporation as an employee under this chapter and Chapter 3, Utah Occupational Disease Act.

(b) If a corporation makes an election under Subsection (4)(a), the corporation shall serve written notice naming the individuals who are directors or officers to be excluded from coverage:

(i) upon its insurance carrier, if any; or

(ii) upon the commission if the corporation is self-insured or has no employee other than the one or more directors or officers being excluded.

(c) A corporation may exclude no more than five individuals who are directors or officers under Subsection (4)(b)(ii).

(d) An exclusion under this Subsection (4) is subject to Subsection 34A-2-103(7)(d).

(e) A director or officer of a corporation is considered an employee under this chapter and Chapter 3, Utah Occupational Disease Act, until the notice described in Subsection (4)(b) is given.

(f) The commission may make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, regarding the form of the notice described in Subsection (4)(b)(ii), including a requirement to provide documentation, if any.

(g) Subsection (4)(a) does not apply to a director or an officer of a motor carrier if the director or officer personally operates a motor vehicle for the motor carrier.

(5) (a) Subject to Subsection (5)(b), the following entities may elect not to include as an employee under this chapter and Chapter 3, Utah Occupational Disease Act, as many as three minors the entity employs:

(i) a partnership;

(ii) a sole proprietorship; or

(iii) a limited liability company that pays federal income tax as either a partnership or sole proprietorship.

(b) An entity may only make the election described in Subsection (5)(a) if:

(i) (A) in the partnership, there are only two partners and the partners are legally married to each other;

(B) in the sole proprietorship, there is only one owner; or

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(C) in the limited liability company:

(I) there are only two members and the members are legally married to each other; or

(II) there is only one member;

(ii) the entity employs no employee other than:

(A) a minor for whom the entity makes the election described in Subsection (5)(a);

(B) if a sole proprietorship, the owner's legal spouse; or

(C) if a limited liability company with a single member, the member's legal spouse;

(iii) each employed minor is a child of:

(A) a partner of the partnership;

(B) the owner of the sole proprietorship; or

(C) a member of the limited liability company;

(iv) the entity carries for each minor health insurance coverage that:

(A) meets the minimum coverage standard that applies to employer-sponsored health plans under the Patient Protection and Affordable Care Act, Public Law 111-148; and

(B) covers work-related injuries; and

(v) the entity obtains a waiver in accordance with Section 34A-2-1004.

(c) A minor a partnership, sole proprietorship, or limited liability company employs as described in this Subsection (5) is considered an employee under this chapter and Chapter 3, Utah Occupational Disease Act, until the insurance coverage described in Subsection (5)(b)(iv) is in effect.

~~[(5)]~~ (6) As used in this chapter and Chapter 3, Utah Occupational Disease Act, "employee," "worker," and "operative" do not include:

(a) a sales agent or associate broker, as defined in Section 61-2f-102, who performs services in that capacity for a principal broker if:

(i) substantially all of the sales agent's or associate broker's income for services is from real estate commissions; and

(ii) the sales agent's or associate broker's services are performed under a written contract that provides that:

(A) the real estate agent is an independent contractor; and

(B) the sales agent or associate broker is not to be treated as an employee for federal income tax purposes;

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(b) an offender performing labor under Section 64-13-16 or 64-13-19, except as required by federal statute or regulation;

(c) an individual who for an insurance producer, as defined in Section 31A-1-301, solicits, negotiates, places, or procures insurance if:

(i) substantially all of the individual's income from those services is from insurance commissions; and

(ii) the services of the individual are performed under a written contract that states that the individual:

(A) is an independent contractor;

(B) is not to be treated as an employee for federal income tax purposes; and

(C) can derive income from more than one insurance company; or

(d) subject to Subsections [~~(6)~~] (7), (8) and [~~(8)~~] (9), an individual who:

(i) (A) owns a motor vehicle; or

(B) leases a motor vehicle to a motor carrier;

(ii) personally operates the motor vehicle described in Subsection [~~(5)~~] (6)(d)(i);

(iii) operates the motor vehicle described in Subsection [~~(5)~~] (6)(d)(i) under a written agreement with the motor carrier that states that the individual operates the motor vehicle as an independent contractor; and

(iv) (A) provides to the motor carrier at the time the written agreement described in Subsection [~~(5)~~] (6)(d)(iii) is executed or as soon after the execution as provided by the commission, a copy of a workers' compensation coverage waiver issued pursuant to Part 10, Workers' Compensation Coverage Waivers Act, to the individual; and

(B) provides to the motor carrier at the time the written agreement described in Subsection [~~(5)~~] (6)(d)(iii) is executed or as soon after the execution as provided by an insurer, proof that the individual is covered by occupational accident related insurance with the coverage and benefit limits listed in Subsection [~~(7)~~] (8)(c).

[~~(6)~~] (7) An individual described in Subsection [~~(5)~~] (6)(d) may become an employee under this chapter and Chapter 3, Utah Occupational Disease Act, if the employer of the individual complies with:

(a) this chapter and Chapter 3, Utah Occupational Disease Act; and

(b) commission rules.

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~~[(7)]~~ (8) As used in this section:

(a) "Motor carrier" means a person engaged in the business of transporting freight, merchandise, or other property by a commercial vehicle on a highway within this state.

(b) "Motor vehicle" means a self-propelled vehicle intended primarily for use and operation on the highways, including a trailer or semitrailer designed for use with another motorized vehicle.

(c) "Occupational accident related insurance" means insurance that provides the following coverage at a minimum aggregate policy limit of \$1,000,000 for all benefits paid, including medical expense benefits, for an injury sustained in the course of working under a written agreement described in Subsection ~~[(5)]~~ (6)(d)(iii):

- (i) disability benefits;
- (ii) death benefits; and
- (iii) medical expense benefits, which include:
  - (A) hospital coverage;
  - (B) surgical coverage;
  - (C) prescription drug coverage; and
  - (D) dental coverage.

~~[(8)]~~ (9) For an individual described in Subsection ~~[(5)]~~ (6)(d):

(a) if the individual is not covered by a workers' compensation policy, the individual shall obtain:

- (i) occupational accident related insurance; and
- (ii) a waiver in accordance with Part 10, Workers' Compensation Coverage Waivers

Act; and

(b) the commission shall verify the existence of occupational accident insurance coverage with the coverage and benefit limits listed in Subsection ~~[(7)]~~ (8)(c) before the commission may issue a workers' compensation coverage waiver to the individual pursuant to Part 10, Workers' Compensation Coverage Waivers Act.

Section ~~33~~4. Section **34A-2-704** is amended to read:

### **34A-2-704. Uninsured Employers' Fund.**

(1) (a) There is created an Uninsured Employers' Fund. The Uninsured Employers' Fund has the purpose of assisting in the payment of workers' compensation benefits to a person

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entitled to the benefits, if:

(i) that person's employer:

(A) is individually, jointly, or severally liable to pay the benefits; and

(B) (I) becomes or is insolvent;

(II) appoints or has appointed a receiver; or

(III) otherwise does not have sufficient funds, insurance, sureties, or other security to cover workers' compensation liabilities; and

(ii) the employment relationship between that person and the person's employer is localized within the state as provided in Subsection (20).

(b) The Uninsured Employers' Fund succeeds to money previously held in the Default Indemnity Fund.

(c) If it becomes necessary to pay benefits, the Uninsured Employers' Fund is liable for the obligations of the employer set forth in this chapter and Chapter 3, Utah Occupational Disease Act, with the exception of a penalty on those obligations.

(2) (a) Money for the Uninsured Employers' Fund shall be deposited into the Uninsured Employers' Fund in accordance with this chapter and Subsection 59-9-101(2).

(b) The commissioner shall appoint an administrator of the Uninsured Employers' Fund.

(c) (i) The state treasurer is the custodian of the Uninsured Employers' Fund.

(ii) The administrator shall make provisions for and direct distribution from the Uninsured Employers' Fund.

(3) Reasonable costs of administering the Uninsured Employers' Fund or other fees required to be paid by the Uninsured Employers' Fund may be paid from the Uninsured Employers' Fund.

(4) The state treasurer shall:

(a) receive workers' compensation premium assessments from the State Tax Commission; and

(b) invest the Uninsured Employers' Fund to ensure maximum investment return for both long and short term investments in accordance with Section 34A-2-706.

(5) (a) The administrator may employ, retain, or appoint counsel to represent the Uninsured Employers' Fund in a proceeding brought to enforce a claim against or on behalf of

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the Uninsured Employers' Fund.

(b) If requested by the commission, the following shall aid in the representation of the Uninsured Employers' Fund:

(i) the attorney general; or

(ii) the city attorney, or county attorney of the locality in which:

(A) an investigation, hearing, or trial under this chapter or Chapter 3, Utah

Occupational Disease Act, is pending;

(B) the employee resides; or

(C) an employer:

(I) resides; or

(II) is doing business.

(c) (i) Notwithstanding Title 63A, Chapter 3, Part 5, Office of State Debt Collection, the administrator shall provide for the collection of money required to be deposited in the Uninsured Employers' Fund under this chapter and Chapter 3, Utah Occupational Disease Act.

(ii) To comply with Subsection (5)(c)(i), the administrator may:

(A) take appropriate action, including docketing an award in a manner consistent with Section 34A-2-212; and

(B) employ counsel and other personnel necessary to collect the money described in Subsection (5)(c)(i).

(6) To the extent of the compensation and other benefits paid or payable to or on behalf of an employee or the employee's dependents from the Uninsured Employers' Fund, the Uninsured Employers' Fund, by subrogation, has the rights, powers, and benefits of the employee or the employee's dependents against the employer failing to make the compensation payments.

(7) (a) The receiver, trustee, liquidator, or statutory successor of an employer meeting a condition listed in Subsection (1)(a)(i)(B) is bound by a settlement of a covered claim by the Uninsured Employers' Fund.

(b) A court with jurisdiction shall grant a payment made under this section a priority equal to that to which the claimant would have been entitled in the absence of this section against the assets of the employer meeting a condition listed in Subsection (1)(a)(i)(B).

(c) The expenses of the Uninsured Employers' Fund in handling a claim shall be

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accorded the same priority as the liquidator's expenses.

(8) (a) The administrator shall periodically file the information described in Subsection (8)(b) with the receiver, trustee, or liquidator of:

(i) an employer that meets a condition listed in Subsection (1)(a)(i)(B);

(ii) a public agency insurance mutual, as defined in Section 31A-1-103, that meets a condition listed in Subsection (1)(a)(i)(B); or

(iii) an insolvent insurance carrier.

(b) The information required to be filed under Subsection (8)(a) is:

(i) a statement of the covered claims paid by the Uninsured Employers' Fund; and

(ii) an estimate of anticipated claims against the Uninsured Employers' Fund.

(c) A filing under this Subsection (8) preserves the rights of the Uninsured Employers' Fund for claims against the assets of the employer that meets a condition listed in Subsection (1)(a)(i)(B).

(9) When an injury or death for which compensation is payable from the Uninsured Employers' Fund has been caused by the wrongful act or neglect of another person not in the same employment, the Uninsured Employers' Fund has the same rights as allowed under Section 34A-2-106.

(10) The Uninsured Employers' Fund, subject to approval of the administrator, shall discharge its obligations by:

(a) adjusting its own claims; or

(b) contracting with an adjusting company, risk management company, insurance company, or other company that has expertise and capabilities in adjusting and paying workers' compensation claims.

(11) (a) For the purpose of maintaining the Uninsured Employers' Fund, an administrative law judge, upon rendering a decision with respect to a claim for workers' compensation benefits in which an employer that meets a condition listed in Subsection (1)(a)(i)(B) is duly joined as a party, shall:

(i) order the employer that meets a condition listed in Subsection (1)(a)(i)(B) to reimburse the Uninsured Employers' Fund for the benefits paid to or on behalf of an injured employee by the Uninsured Employers' Fund along with interest, costs, and attorney fees; and

(ii) impose a penalty against the employer that meets a condition listed in Subsection

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(1)(a)(i)(B):

(A) of 15% of the value of the total award in connection with the claim; and

(B) that shall be deposited into the Uninsured Employers' Fund.

(b) An award under this Subsection (11) shall be collected by the administrator in accordance with Subsection (5)(c).

(12) The state, the commission, and the state treasurer, with respect to payment of compensation benefits, expenses, fees, or disbursement properly chargeable against the Uninsured Employers' Fund:

(a) are liable only to the assets in the Uninsured Employers' Fund; and

(b) are not otherwise in any way liable for the making of a payment.

(13) The commission may make reasonable rules for the processing and payment of a claim for compensation from the Uninsured Employers' Fund.

(14) (a) (i) If it becomes necessary for the Uninsured Employers' Fund to pay benefits under this section to an employee described in Subsection (14)(a)(ii), the Uninsured Employers' Fund may assess all other self-insured employers amounts necessary to pay:

(A) the obligations of the Uninsured Employers' Fund subsequent to a condition listed in Subsection (1)(a)(i)(B) occurring;

(B) the expenses of handling covered a claim subsequent to a condition listed in Subsection (1)(a)(i)(B) occurring;

(C) the cost of an examination under Subsection (15); and

(D) other expenses authorized by this section.

(ii) This Subsection (14) applies to benefits paid to an employee of:

(A) a self-insured employer, as defined in Section 34A-2-201.5, that meets a condition listed in Subsection (1)(a)(i)(B); or

(B) if the self-insured employer that meets a condition described in Subsection (1)(a)(i)(B) is a public agency insurance mutual, a member of the public agency insurance mutual.

(b) The assessments of a self-insured employer shall be in the proportion that the manual premium of the self-insured employer for the preceding calendar year bears to the manual premium of all self-insured employers for the preceding calendar year.

(c) A self-insured employer shall be notified of the self-insured employer's assessment

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not later than 30 days before the day on which the assessment is due.

(d) (i) A self-insured employer may not be assessed in any year an amount greater than 2% of that self-insured employer's manual premium for the preceding calendar year.

(ii) If the maximum assessment does not provide in a year an amount sufficient to make all necessary payments from the Uninsured Employers' Fund for one or more self-insured employers that meet a condition listed in Subsection (1)(a)(i)(B), the unpaid portion shall be paid as soon as money becomes available.

(e) A self-insured employer is liable under this section for a period not to exceed three years after the day on which the Uninsured Employers' Fund first pays benefits to an employee described in Subsection (14)(a)(ii) for the self-insured employer that meets a condition listed in Subsection (1)(a)(i)(B).

(f) This Subsection (14) does not apply to a claim made against a self-insured employer that meets a condition listed in Subsection (1)(a)(i)(B) if the condition listed in Subsection (1)(a)(i)(B) occurred before July 1, 1986.

(15) (a) The following shall notify the division of any information indicating that any of the following may be insolvent or in a financial condition hazardous to its employees or the public:

(i) a self-insured employer; or

(ii) if the self-insured employer is a public agency insurance mutual, a member of the public agency insurance mutual.

(b) Upon receipt of the notification described in Subsection (15)(a) and with good cause appearing, the division may order an examination of:

(i) that self-insured employer; or

(ii) if the self-insured employer is a public agency insurance mutual, a member of the public agency mutual.

(c) The cost of the examination ordered under Subsection (15)(b) shall be assessed against all self-insured employers as provided in Subsection (14).

(d) The results of the examination ordered under Subsection (15)(b) shall be kept confidential.

(16) (a) In a claim against an employer by the Uninsured Employers' Fund, or by or on behalf of the employee to whom or to whose dependents compensation and other benefits are

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paid or payable from the Uninsured Employers' Fund, the burden of proof is on the employer or other party in interest objecting to the claim.

(b) A claim described in Subsection (16)(a) is presumed to be valid up to the full amount of workers' compensation benefits claimed by the employee or the employee's dependents.

(c) This Subsection (16) applies whether the claim is filed in court or in an adjudicative proceeding under the authority of the commission.

(17) A partner in a partnership or an owner of a sole proprietorship may not recover compensation or other benefits from the Uninsured Employers' Fund if:

(a) the person is not included as an employee under Subsection 34A-2-104(3) or (5); or

(b) the person is included as an employee under Subsection 34A-2-104(3), but:

(i) the person's employer fails to insure or otherwise provide adequate payment of direct compensation; and

(ii) the failure described in Subsection (17)(b)(i) is attributable to an act or omission over which the person had or shared control or responsibility.

(18) A director or officer of a corporation may not recover compensation or other benefits from the Uninsured Employers' Fund if the director or officer is excluded from coverage under Subsection 34A-2-104(4).

(19) The Uninsured Employers' Fund:

(a) shall be:

(i) used in accordance with this section only for:

(A) the purpose of assisting in the payment of workers' compensation benefits in accordance with Subsection (1); and

(B) in accordance with Subsection (3), payment of:

(I) reasonable costs of administering the Uninsured Employers' Fund; or

(II) fees required to be paid by the Uninsured Employers' Fund; and

(ii) expended according to processes that can be verified by audit; and

(b) may not be used for:

(i) administrative costs unrelated to the Uninsured Employers' Fund; or

(ii) an activity of the commission other than an activity described in Subsection (19)(a).

(20) (a) For purposes of Subsection (1), an employment relationship is localized in the

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state if:

(i) (A) the employer who is liable for the benefits has a business premise in the state;  
and

(B) (I) the contract for hire is entered into in the state; or  
(II) the employee regularly performs work duties in the state for the employer who is liable for the benefits; or

(ii) the employee is:  
(A) a resident of the state; and  
(B) regularly performs work duties in the state for the employer who is liable for the benefits.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall by rule define what constitutes regularly performing work duties in the state.

Section ~~(4)~~5. Section **34A-2-1003** is amended to read:

### **34A-2-1003. Issuance of a waiver.**

(1) The commission shall issue a workers' compensation coverage waiver to a business entity that:

(a) elects not to include an owner, partner, or corporate officer or director as an employee under a workers' compensation policy in accordance with Section 34A-2-103 and Subsection 34A-2-104(3) or (4);

(b) employs no other employee on the day on which the commission issues the waiver to the business entity;

(c) provides to the commission the information required by Section 34A-2-1004; and

(d) pays a fee [~~established by~~] the commission establishes in accordance with Section 63J-1-504, [~~except that the fee may~~] that does not exceed \$50.

(2) (a) Subject to Subsection (2)(b), the commission may issue a workers' compensation coverage waiver for as many as three employed minors to:

(i) a partnership;  
(ii) a sole proprietorship; or  
(iii) a limited liability company that pays federal income tax as a partnership or sole proprietorship.

(b) The commission shall issue a workers' compensation coverage waiver to an entity

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described in Subsection (2)(a), if the entity:

(i) elects not to include a minor as an employee under a workers' compensation policy in accordance with [Section 34A-2-103](#) and Subsection 34A-2-104(5);

(ii) on the day on which the commission issues the waiver to the entity, employs no employee other than:

(A) a minor for whom the entity makes the election described in Subsection (2)(b)(i);

(B) if a sole proprietorship, the owner's legal spouse; or

(C) if a limited liability company with a single member, the member's legal spouse;

(iii) provides to the commission the information required by Section 34A-2-1004; and

(iv) pays a fee the commission establishes in accordance with Section 63J-1-504, that does not exceed \$50.

~~[(2)]~~ (3) (a) A waiver issued under this section expires one year from the day on which it is issued unless renewed by the holder of the waiver.

(b) To renew a waiver issued under ~~[this part]~~ Subsection (1), the holder of the waiver shall:

(i) employ no other employee on the day on which the commission renews the waiver;

(ii) provide to the commission the information required by Section 34A-2-1004; and

(iii) pay a fee established by the commission in accordance with Section 63J-1-504,

~~[except that the fee may]~~ that does not exceed \$50.

(c) To renew a waiver issued under Subsection (2), the holder of the waiver shall:

(i) provide to the commission the information required by Section 34A-2-1004; and

(ii) pay a fee the commission establishes in accordance with Section 63J-1-504, that does not exceed \$50.

~~[(3)]~~ (4) (a) As of the day on which a business entity described in Subsection (1) employs an employee other than an owner, partner, or corporate officer or director described in Subsection (1)(a):

~~[(a)]~~ (i) the business entity's waiver is invalid; and

~~[(b)]~~ (ii) the business entity is required to provide workers' compensation coverage for that employee in accordance with Section 34A-2-201.

(b) As of the day on which an entity described in Subsection (2) employs any individual other than an individual described in Subsection (2)(b)(ii) or fails to provide health

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insurance coverage to the extent required under Subsection 34A-2-104(5):

(i) the entity's waiver is invalid; and

(ii) the entity is required to provide workers' compensation coverage for the employed minor in accordance with Section 34A-2-201.

~~(4)~~ (5) The commission shall deposit a fee collected under this section in the Industrial Accident Restricted Account created in Section 34A-2-705.

~~(5)~~ (6) Unless invalidated under Section 34A-2-1005, notwithstanding the other provisions of this section, a waiver issued by an insurer that is valid on June 30, 2011, remains valid until ~~[its]~~ the waiver's expiration date.

Section ~~(5)~~ 6. Section **34A-2-1004** is amended to read:

### **34A-2-1004. Information required to obtain a waiver.**

(1) To obtain or renew a waiver, a business entity shall submit to the commission:

~~(1)~~ (a) a copy of two or more of the following:

~~(a)~~ (i) the business entity's federal or state income tax return that shows business income for the complete taxable year that immediately precedes the day on which the business entity submits the information;

~~(b)~~ (ii) a valid business license;

~~(c)~~ (iii) a license to engage in an occupation or profession, including a license under Title 58, Occupations and Professions; or

~~(d)~~ (iv) documentation of an active liability insurance policy that covers the business entity's activities; or

~~(2)~~ (b) a copy of one item listed in Subsection (1)(a) and a copy of two or more of the following:

~~(a)~~ (i) proof of a bank account for the business entity;

~~(b)~~ (ii) proof that for the business entity there is:

~~(1)~~ (A) a telephone number; and

~~(2)~~ (B) a physical location; or

~~(c)~~ (iii) an advertisement of services showing the business entity's name and contact information:

~~(1)~~ (A) in a newspaper of general circulation;

~~(2)~~ (B) in a telephone directory;

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~~[(iii)]~~ (C) on a website or social media; or

~~[(iv)]~~ (D) in a trade magazine.

(2) In addition to the requirements described in Subsection (1), to obtain or renew a waiver under Subsection 34A-2-1003(2), an entity shall submit to the commission:

(a) proof that the entity employs no employee other than:

(i) a minor for whom the entity elects to obtain a workers' compensation coverage waiver;

(ii) if a sole proprietorship, the owner's legal spouse; or

(iii) if a limited liability company with a single member, the member's legal spouse;

(b) proof that each minor employee for whom the entity seeks to obtain or renew a waiver is a child of:

(i) a partner of the partnership;

(ii) the owner of the sole proprietorship; or

(iii) a member of the limited liability company;

(c) proof that the entity carries health insurance coverage for each minor employee for whom the entity seeks to obtain or renew a waiver to the extent required under Subsection 34A-2-104(5); and

(d) written confirmation from the entity's insurer that the insurer will cover each minor employee for any work-related injury.

Section ~~6~~7. Section **34A-2-1005** is amended to read:

### **34A-2-1005. Enforcement.**

(1) The commission may investigate a business entity to determine whether:

(a) the business entity validly elects to not cover an owner, partner, or corporate officer or director as an employee under a workers' compensation policy in accordance with Section 34A-2-103[-]; or

(b) the business entity validly elects not to cover an employed minor as an employee under a workers' compensation policy in accordance with Section ~~34A-2-103~~ or 34A-2-104.

(2) If the commission determines that a business entity's election as provided in this section is invalid, the commission may:

(a) prohibit a business entity from using a waiver obtained under this part; and

(b) take any action provided for under this chapter or Chapter 3, Utah Occupational

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Disease Act, for failure to obtain workers' compensation coverage for an employee.